



STATE OF DELAWARE

PUBLIC SERVICE COMMISSION

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March 27, 2017

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Toni Loper, Public Utility Analyst 

SUBJECT: IN THE MATTER OF THE APPLICATION OF OPEN MARKET ENERGY LLC FOR A CERTIFICATE TO PROVIDE ELECTRIC SUPPLY SERVICES WITHIN THE STATE OF DELAWARE (FILED FEBRUARY 14, 2017) - PSC DOCKET No. 17-0067

Background

On February 14, 2017, Open Market Energy LLC (the "Company") filed an application (the "Application") with the Delaware Public Service Commission ("Commission") for an Electric Supplier Certificate ("ESC") to act as a Broker in the State of Delaware pursuant to §1012 of the Electric Utility Restructuring Act of 1999, 26 *Del. C.* §1001 - §1020 (the "Act") and 26 *Del. Admin. C.* §3001, the Commission's Rules for Certification and Regulation of Electric Suppliers (the "Supplier Rules").¹

Application

The Company's original filing was submitted February 14, 2017; the submitted application met the minimum filing requirements (MFR's).

Review and Analysis

Authority to do Business in Delaware

The Company is a limited liability company formed under the laws of Maryland. The Company provided proof issued by the Delaware Secretary of State that it is legally authorized and qualified to do business in the State of Delaware. The Company also filed a copy of the Delaware Business License issued from by the Delaware Division of Revenue.

Resident Agent

The Company lists Marcia Eisinger, Energy Consultant based in Rehoboth Beach, DE as the Resident Agent.

¹ Unless otherwise noted, all references to capitalized terms are set forth in the Act and/or the Supplier Rules.

Compliance with Regional Requirements

The Company affirms in its Application that it will only present electricity supply contracts to its customers from Marketers/Electric Suppliers who are in compliance with all applicable PJM requirements.

Financial, Operational, Managerial and Technical Ability

The Company provided the financial statements as indicia of financial capability under Section 2.1.1.5.1 of the Supplier Rules. Staff believes that the financial statements show substantial evidence of the Applicant's financial ability to provide services as a Broker in the State of Delaware.

The Company anticipates acting as a Broker serving small commercial, large commercial and industrial customers for the sale or purchase of electricity throughout the State of Delaware. The Application states that the Company currently offers service in Maryland, the District of Columbia, Ohio, and Pennsylvania, and has an application pending in Virginia. Staff has confirmed that the Company is licensed in those states. The application states that the Company has not been denied approval nor had its authority revoked by any state commission.

The Application included a summary of the key operating personnel of the Company responsible for Delaware operations. Mr. Steven Pritchett, Vice President, has over 20 years' experience in the energy industry. His experience includes work with Washington Gas Energy Services where he held positions as a Marketing Manager and Regional Manager Commercial Business. In those positions his responsibilities included management and training of account representatives, management of energy procurement programs, development of energy strategies, analyzing delivery tariffs, streamlining and automation of the customer contracting process. Mr. Pritchett joined Open Market Energy in 2015 and his responsibilities with OME include managing the energy purchasing program, developing and introducing energy strategies, as well as managing procurement. Staff performed an internet review of the Company and its key operating personnel. The search did not reveal any issues.

Surety Bond

The Company did not post a surety bond because it is a Broker only and there are no service agreements between the Company and any Delaware Electric Distribution Company. The Company will not collect any fees or deposits from any of its customers for any of its brokerage services.

Verification of Application

The Application included signed, sworn verification letter from Mr. Gardiner, President.

Consent to Jurisdiction

The Company consents to the jurisdiction of the Delaware courts.

Contracts

The Company also did not provide any sample contracts for Residential or Commercial Customers because it is a Broker only and does not and will not have contracts with Retail Electric Customers to provide Electric Supply Service.

Statement of Criminal Activity

The Applicant stated in the application that he has not been charged or convicted of any criminal activity nor have any of its principals or corporation offices. Applicant has no affiliated interests. An internet review of the Company and its principals revealed no outstanding issues.

Additional Information

OME previously submitted an application for certification in Delaware in March 2014. During the course of Staff's review of that filing several issues arose through extensive discovery with the Company. Staff conducted an internet review of the licensing of the Company where it was noted that from October 2009 until May 2010 the Applicant had forfeited its good standing in its home state of Maryland due to failure to file a property return. Additionally, Staff found that OME was assessed a \$100 civil penalty from the Maryland Public Service Commission for operating in Maryland without the requisite license.

During Staff's review of the current Application no additional issues were found regarding OME and the Company has become licensed in two additional states, Ohio and Pennsylvania without issue since withdrawing its original Application with this Commission in April 2015.

Legal Review

On March 29, 2017, following Staff's completed review and analysis of the Application, Staff forwarded its final analysis to the assigned attorney to confirm that all required documentation requested and received from the Company was in compliance with Delaware law and the Supplier Rules and regulations.

Staff Recommendation

Based on Staff's review and analysis of the Application the Company has provided all information required by the Act and the Supplier Rules. Staff believes that the Applicant has demonstrated substantial evidence of financial, operational, managerial, and technical ability to operate as a Broker in Delaware consistent with good business practices. Therefore, Staff recommends the Commission approve the application.